

SINHA LAW

1645 Willow Street, Suite 150
San Jose, CA 95125
408.791.0432 (voice)
www.sinha-law.com

July 13, 2017

Via Hand Delivery

Carl Davis
Owner/Manager
Carl's Ready Mix
3660 Copperhill Parkway
Santa Rosa, CA 95403

Via US Mail

Charles Sulahian
17421 Tarzana Street
Encino, CA 91316

**Re: 60-Day Notice of Violations and Intent to File Suit Under the Federal Water
Pollution Control Act ("Clean Water Act")**

To Officers, Directors, Operators, Property Owners and/or Facility Managers of Carl's Ready
Mix:

The California Environmental Protection Association ("CEPA") provides this 60-day Notice of violations of the Federal Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that CEPA believes are occurring at the Carl's Ready Mix facility located at 3660 Copperhill Parkway in Santa Rosa, California ("the Facility" or "the site"). Pursuant to CWA §505(b) (33 U.S.C. §1365(a)), this Notice is being sent to you as the responsible property owners, officers, operators or managers of the Facility, as well as to the U.S. Environmental Protection Agency ("EPA"), the U.S. Attorney General, the California State Water Resources Control Board ("SWRCB"), and the California North Coast Regional Water Quality Control Board ("RWQCB").

CEPA is a Sonoma County-based environmental citizen's group established under the laws of the State of California to protect, enhance, and assist in the restoration of all rivers, creeks, streams, wetlands, vernal pools, and tributaries of California.

This Notice addresses the violations of the CWA and the terms of California's Statewide General Permit for Dischargers of Storm Water for Industrial Activities ("General Permit") arising from the unlawful discharge of pollutants from the Facility into Mark West Creek, a tributary of the Russian River (which is listed as impaired for sediment, temperature, and bacteria under CWA §303(d)).

Carl's Ready Mix (the "Discharger") is hereby placed on formal notice by CEPA that after the expiration of sixty (60) days from the date this Notice was delivered, CEPA will be entitled to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, National Pollutant Discharge Elimination System ("NPDES") permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, § 301(a), § 402(p), and § 505(a)(1)), as well as the failure to comply with requirements set forth in the Code of Federal Regulations and the North Coast RWQCB Water Quality Control Plan or "Basin Plan".

I. THE SPECIFIC STANDARD, LIMITATION, OR ORDER VIOLATED

The Discharger filed a Notice of Intent ("NOI") on June 22, 2015, with respect to the Facility, agreeing to comply with the terms and conditions of the General Permit. The SWRCB approved the NOI, and the Discharger was assigned Waste Discharger Identification ("WDID") number 1 491021904.

However, in its operations of the Facility, the Discharger has failed and is failing to comply with specific terms and conditions of the General Permit as described in Section II below. These violations are continuing in nature. Violations of the General Permit are violations of the CWA, specifically CWA § 301(a) and CWA § 402(p). Therefore, the Discharger has committed ongoing violations of the substantive and procedural requirements of CWA § 402(p) and of NPDES Permit No. CAS000001, State Water Resources Control Board Order 2014-0057-DWQ (the "General Permit") relating to industrial activities at the Facility.

II. VIOLATIONS OF THE CLEAN WATER ACT AND GENERAL PERMIT

A. Facility Operations

Carl's Ready Mix is a Ready-Mix Concrete Batch Plant. Site operations are covered under Standard Industrial Code ("SIC") 3273, Ready Mix Concrete.

Site operations take place primarily outdoors on a site that slopes towards storm drains which eventually enter the navigable waters of the Laguna de Santa Rosa and the Russian River, all of which are in proximity to the Facility. Because the real property on which the Facility is located is subject to rain events, the range of pollutants discharged from the Facility and identified in this Notice can discharge to the Laguna de Santa Rosa and the Russian River.

B. Carl's Ready Mix's Specific Violations

1. *Failure to Comply with the Facility SWPPP*

Pursuant to the requirements of the General Permit, the Discharger prepared a Facility Stormwater Pollution Prevent Plan (SWPPP) on June 23, 2015 and uploaded to the SMARTs database August 13, 2015. The SWPPP contained the following provisions in Section 3 – Best Management Practices:

All minimum BMPs that are required by the General Permit and necessary to meet the facility conditions will be implemented.

3.1.1 Good Housekeeping

The following good housekeeping measures will be implemented in accordance with the General Permit (Section X.H.1.a):

- Observe all outdoor areas associated with industrial activity including stormwater discharge locations, drainage areas, conveyance systems, waste handling/disposal areas, and perimeter areas impacted by off-facility materials or stormwater run-on to determine housekeeping needs. Any identified debris, waste, spills, tracked materials, or leaked materials will be cleaned and disposed of properly;
- Minimize or prevent material tracking;
- Minimize dust generated from industrial materials or activities;
- Ensure that all facility areas impacted by rinse/wash waters are cleaned as soon as possible;
- Cover all stored industrial materials that can be readily mobilized by contact with stormwater;
- Contain all stored non-solid industrial materials or wastes (e.g., particulates, powders, shredded paper, etc.) that can be transported or dispersed via by the wind or contact with stormwater;
- Prevent disposal of any rinse/wash waters or industrial materials into the stormwater conveyance system;
- Minimize stormwater discharges from non-industrial areas (e.g., stormwater flows from employee parking area) that contact industrial areas of the facility; and
- Minimize authorized NSWs from non-industrial areas (e.g., potable water, fire hydrant testing, etc.) that contact industrial areas of the facility.

3.1.2 Preventative Maintenance

The following preventative maintenance measures will be implemented in accordance with the General Permit (Section X.H.1.b):

- Identify all equipment and systems used outdoors that may spill or leak pollutants;
- Observe the identified equipment and systems to detect leaks, or identify conditions that may result in the development of leaks;
- Establish an appropriate schedule for maintenance of identified equipment and systems; and
- Establish procedures for prompt maintenance and repair of equipment, and maintenance of systems when conditions exist that may result in the development of spills or leaks.

3.1.4 Material Handling and Waste Management

The following material handling and waste management measures will be implemented in accordance with the General Permit (Section X.H.1.d):

- Prevent or minimize handling of industrial materials or wastes that can be readily mobilized by contact with stormwater during a storm event;
- Contain all stored non-solid industrial materials or wastes (e.g., particulates, powders, shredded paper, etc.) that can be transported or dispersed by the wind or contact with stormwater during handling;
- Cover industrial waste disposal containers and industrial material storage containers that contain industrial materials when not in use;
- Divert run-on and stormwater generated from within the facility away from all stockpiled materials;
- Clean all spills of industrial materials or wastes that occur during handling in accordance with the spill response procedures (Section X.H.1.c); and
- Observe and clean as appropriate, any outdoor material or waste handling equipment or containers that can be contaminated by contact with industrial materials or wastes.

On July 1, 2016, the Discharger was accelerated to Level 1 Status pursuant to Section XII.C of the General Permit, for exceedances of Iron and Total Suspended Solids. Pursuant to the General Permit, the Facility was evaluated on December 27, 2016, and a Level 1 Exceedance Response Evaluation Report was completed and certified on January 18, 2017.

The December 27, 2016, evaluation completed by GP Environmental Solutions, noted the following deficiencies in BMP implementation at the site:

1. Good Housekeeping: *Partially rusted process equipment, and machinery stored onsite (exposed); Concrete batch plant paved areas not swept as frequently as needed.*
2. Preventative Maintenance: *Auger motor/ system that separates water from concrete excess down for maintenance.*
3. Material Handling: *Product aggregate and material piles, along with waste concrete piles uncovered; Extra/ returned concrete put on ground to dry in areas where runoff may occur.*
4. Erosion and Sediment Controls: *Driveway and internal roads broken down with fines, could use new application of gravel/road base to minimize sediment in runoff.*

On July 1, 2017, the Discharger was accelerated to Level 2 Status pursuant to Section XII.D of the General Permit which provides as follows: “A Discharger’s Level 1 status for any given parameter shall change to Level 2 status if sampling results indicate an NAL exceedance for that same parameter while the Discharger is in Level 1.” The acceleration to Level 2 status was precipitated by average levels of Iron from the Discharger’s sampling results taken during

Fiscal Year 2016-2017; specifically, on December 14, 2016, January 3, 2017, February 2, 2017, and March 24, 2017. (See Section 3 below)

The Discharger's continued exceedances are further evidence of its failure to follow the Facility SWPPP and Level 1 ERA Evaluation Report.

2. *Deficient BMP Implementation*

Sections I.C, V.A and X.C.1.b of the General Permit require Dischargers to identify and implement minimum and advanced Best Management Practices ("BMPs") that comply with the Best Available Technology ("BAT") and Best Conventional Pollutant Control Technology ("BCT") requirements of the General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice considering technological availability and economic practicability and achievability.

Carl's Ready Mix has violated and continues to violate the terms and conditions of the General Permit by failing to implement minimum and/or advanced BMPs that utilize BAT and BCT to control the discharge of pollutants in storm water at the Facility.

On November 19, 2014, a formal Notice of Violation was issued against the Discharger by the Regional Water Board for unauthorized non-stormwater discharges and deficient BMP implementation. The Notice of Violation was based on discharges of large quantities of concrete to the ground in vicinity of wetlands at the site, due to the Discharger's failure to capture concrete washwater wastes which were discharging into wetlands.

On February 4, 2015, and also on April 7, 2015, the facility was re-inspected by the Water Board. On both instances, the inspector noted that fresh and waste concrete were continuing to be dumped to the ground by the Discharger, in violation of standard BMPs as well as the Good Housekeeping and Material Handling BMP sections of the facility's SWPPP.

On December 19, 2016, the facility was again inspected by an inspector from the Regional Water Quality Control Board for the North Coast Region, due to a Complaint from the Sonoma County Fire Department regarding the Discharger's continued dumping of waste concrete to the ground in violation of General Permit, as well as the and the prior issued Notice of Violation. That Inspection revealed discharge of waste concrete to the ground in numerous places. The inspector also noted the following: "Concrete fines were washed from the dumpsite to a runoff detention area adjacent to wetlands. The wetland grasses were beginning to show stress from the high pH discharges that had been obviously occurring over time at this facility. These waste dumps of concrete were happening during a period of heavy sustained rainfall over a number of days."

3. *Discharges in Violation of the General Permit*

Section 402(p) of the Clean Water Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit such as the General Permit.

33 U.S.C. § 1342. Sections I.C.27 and III.A and B of the General Permit prohibit the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Section XXI.A of the General Permit requires Dischargers to comply with effluent standards or prohibitions established under section CWA 307(a) for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions.

Sections III and VI of the General Permit prohibit storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment; cause or threaten to cause pollution, contamination, or nuisance; cause or contribute to an exceedance of any applicable water quality standards in any affected receiving water; violate any discharge prohibitions contained in applicable Regional Water Board Water Quality Control Plans (Basin Plans) or statewide water quality control plans and policies; or contain hazardous substances equal to or in excess of a reportable quantity listed in 40 Code of Federal Regulations sections 110.6, 117.21, or 302.6.

Carl's Ready Mix sampling and analysis results reported to the RWQCB confirm discharges of specific pollutants and materials other than storm water, in violation of the General Permit provisions listed above. Self-monitoring reports under the General Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1492 (9th Cir. 1988).

Table 2 of the General Permit (TABLE 2: *Parameter NAL Values, Test Methods, and Reporting Units*) outlines specific Annual and Instantaneous Numeric Action Levels ("NALs") for common parameters. A copy of Table 2 is included with this Notice.

Carl's Ready Mix' storm water analyses as indicated below contained levels for tested parameters in excess of Annual or Instantaneous NAL levels. The discharges of pollutants from the Facility have violated Discharge Prohibitions and Receiving Water Limitations of the General Permit and are evidence of ongoing violations of Effluent Limitations.

Date of Sample Collection	Drainage Collection Point	Parameter	Concentration in Discharge (mg/L)	NAL Annual or Instantaneous Value (mg/L)
04/01/14	CRM-East Outfall	Iron	2.0	1.0
11/19/14	“”	Iron	2.8	1.0
02/06/15	“”	Iron	7.5	1.0
01/05/16	“”	Iron	4.6	1.0
04/22/16	“”	TSS	250	100
04/22/16	“”	Iron	18	1.0
05/06/16	“”	Iron	2.3	1.0
05/06/16	“”	TSS	150	100
02/02/17	“”	Iron	2.9	1.0
03/24/17	“”	Iron	6.4	1.0

The Discharger may have had other violations that can only be fully identified and documented once discovery and investigation have been completed. Hence, to the extent possible, CEPA includes such violations in this Notice and reserves the right to amend this Notice, if necessary, to include such further violations in future legal proceedings.

The violations discussed herein are derived from eye witness reports and records publicly available. These violations are continuing.

The Facility is located near the Mark West Creek, which is a tributary of both the Laguna de Santa Rosa and the Russian River – all waters of the United States. The Russian River is listed under the CWA as impaired for Nutrients (D.O., Nitrogen, Phosphorous), Pathogens (Indicator Bacteria), Metals (Mercury), Misc. (Temperature), and Sediment (Siltation). Receiving water concerns for the Facility are nitrogen, phosphorous and sediment, which are analyzed for as N+N (nitrogen), total phosphorous and TSS (suspended sediment). All illegal discharges and activities described in this Notice occur in close proximity to the above-identified waters. During storm events, the discharges are highly likely to discharge to said waters.

The RWQCB has determined that the watershed areas and affected waterways identified in this Notice are beneficially used for: water contact recreation, non-contact water recreation, fish and wildlife habitat, preservation of rare and endangered species, fish migration, fish spawning, navigation, and sport fishing. Information available to CEPA indicates the continuation of unlawful discharges of pollutants from the Facility into waters of the United States, specifically the Laguna de Santa Rosa and the Russian River, in violation of the General Permit and the CWA. CEPA is informed and believes, and on such information and belief alleges, that these illegal discharges will continue to harm beneficial uses of the above-identified waters until the Discharger corrects the violations outlined in this Notice.

III. THE PERSON OR PERSONS RESPONSIBLE FOR THE VIOLATIONS

The entity responsible for the alleged violations is Carl's Ready Mix ("the Discharger"), including its parent companies, owners, operators and employees responsible for compliance with the CWA.

IV. THE LOCATION OF THE VIOLATIONS

The location of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is Carl's Ready Mix's permanent facility address of 3660 Copperhill Parkway, in Santa Rosa, California, and includes the adjoining navigable waters of the Laguna de Santa Rosa and the Russian River, respectively - both waters of the United States.

V. THE DATE, DATES, OR REASONABLE RANGE OF DATES OF THE VIOLATIONS

The range of dates covered by this 60-day Notice is from at least April 1, 2014, to the date of this Notice. CEPA may from time to time update this Notice to include all violations which may occur after the range of dates covered by this Notice. Some of the violations are continuous in nature; therefore, each day constitutes a violation.

VI. CONTACT INFORMATION

The entity giving this 60-day Notice is the California Environmental Protection Association ("CEPA").

To ensure proper response to this Notice, all communications should be addressed as follows:

Gerard Duenas, President
CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION
1275 Fourth Street #141
Santa Rosa, CA 95404
Telephone: (707) 304-2649
Email: calenvproassn@yahoo.com

AND

Xhavin Sinha, Attorney for
CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION
1645 Willow Street, #150
San Jose, CA 95125
Telephone: (408) 791-0432
Email: xsinha@sinha-law.com

VII. PENALTIES

The violations set forth in this Notice affect the health and enjoyment of members of CEPA who reside near and recreate in the Laguna de Santa Rosa watershed and the Russian River. Members of CEPA use the watershed and the Russian River for recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the Discharger's violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. See also 40 C.F.R. §§ 19.1-19.4.

CEPA believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

VIII. CONCLUSION

The CWA specifically provides a 60-day notice period to promote resolution of disputes. CEPA encourages the Discharger and/or its counsel to contact CEPA or its counsel within 20 days of receipt of this Notice to initiate a discussion regarding the violations detailed herein.

During the 60-day notice period, CEPA is willing to discuss effective remedies for the violations, however, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. CEPA reserves the right to file a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,



Xhavin Sinha

Attorney for CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION

Enclosure

TABLE 2 – Parameter NAL Values, Test Methods and Reporting Units

SINHA
LAW

60-Day Notice of Intent to Sue
July 13, 2017
Page 10 of 10

Copies to:

Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Jeff Sessions, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Executive Officer
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

TABLE 2: Parameter NAL Values, Test Methods, and Reporting Units

PARAMETER	TEST METHOD	REPORTING UNITS	ANNUAL NAL	INSTANTANEOUS MAXIMUM NAL
pH*	See Section XI.C.2	pH units	N/A	Less than 6.0 Greater than 9.0
Suspended Solids (TSS)*, Total	SM 2540-D	mg/L	100	400
Oil & Grease (O&G)*, Total	EPA 1664A	mg/L	15	25
Zinc, Total (H)	EPA 200.8	mg/L	0.26**	
Copper, Total (H)	EPA 200.8	mg/L	0.0332**	
Cyanide, Total	SM 4500-CN C, D, or E	mg/L	0.022	
Lead, Total (H)	EPA 200.8	mg/L	0.262**	
Chemical Oxygen Demand (COD)	SM 5220C	mg/L	120	
Aluminum, Total	EPA 200.8	mg/L	0.75	
Iron, Total	EPA 200.7	mg/L	1.0	
Nitrate + Nitrite Nitrogen	SM 4500-NO3- E	mg/L as N	0.68	
Total Phosphorus	SM 4500-P B+E	mg/L as P	2.0	
Ammonia (as N)	SM 4500-NH3 B+ C or E	mg/L	2.14	
Magnesium, total	EPA 200.7	mg/L	0.064	
Arsenic, Total (c)	EPA 200.8	mg/L	0.15	
Cadmium, Total (H)	EPA 200.8	mg/L	0.0053**	
Nickel, Total (H)	EPA 200.8	mg/l	1.02**	
Mercury, Total	EPA 245.1	mg/L	0.0014	
Selenium, Total	EPA 200.8	mg/L	0.005	
Silver, Total (H)	EPA 200.8	mg/L	0.0183**	
Biochemical Oxygen Demand (BOD)	SM 5210B	mg/L	30	

SM – Standard Methods for the Examination of Water and Wastewater, 18th edition

EPA – U.S. EPA test methods

(H) – Hardness dependent

* Minimum parameters required by this General Permit

**The NAL is the highest value used by U.S. EPA based on their hardness table in the 2008 MSGP.